

*** THE HIGH COURT OF DELHI AT NEW DELHI**

+ RC.REV. 351/2011

Date of Decision: 04.09.2012

PURAN CHAND

.... PETITIONER

Through: Mr. Pradeep Sharma, Adv.

Versus

BHAGWAN SINGH VERMA

....RESPONDENT

Through: Mr. Tarun Sondhi, Adv.

CORAM:

HON'BLE MR. JUSTICE M.L. MEHTA

M.L. MEHTA, J.

1. This is a revision petition under Section 25B(8) of the Delhi Rent Control Act (for short 'the Act'). It is directed against judgment dated 01.06.2011 of Additional Rent Controller, West District, Delhi whereby eviction petition filed by the petitioner seeking eviction of his tenant, the respondent, was dismissed.

2. The petitioner, being the owner/landlord of the tenanted premises comprising of two rooms, kitchen and bath room on the second floor of the suit premises FB-10, Tagore Garden, New Delhi-110027, had filed an eviction petition against the respondent-tenant, seeking his eviction therefrom on the ground of bonafide requirement thereof by himself and his family members.

3. His case in short was that he along with his wife and married daughter with her husband and three daughters were residing on the first

floor of the suit premises. The accommodation available with him on the first floor comprised of only two bed rooms set and the same was not sufficient for their needs. It was averred that his only daughter, along with her husband and three daughters, was residing with him and his three grand-daughters were studying and the accommodation available for them was not sufficient. It was averred that he and his wife, being old and ill, could not afford to share their room with anyone and required a separate room. It was also averred that one room was required by his daughter and her family for daily needs and in addition, the entire family also required one living room for visiting guests and relatives.

4. On being noticed, the respondent filed leave to defend application, which was allowed and the matter proceeded for trial. The respondent had taken specific plea in the written statement that during the pendency of the petition ground floor premises consisting of two room set fell vacant on 13th May, 2007 and the same was lying vacant and was available for the use by the petitioner. In addition, to the two room set on the ground floor, there was verandah and the shop available with the petitioner. It was denied that the daughter of the petitioner was residing with him or was dependent upon him for her residence or otherwise.

5. In the trial before the ARC, the petitioner was able to prove from the statements of officials of New Indian Assurance Company examined as PW-2 and PW-3 that as per their official record, Geeta, daughter of the petitioner, and her husband Manohar Lal had given their address as FB-10, Tagore Garden, New Delhi i.e. the address of the suit premises. From the statement of official of the school, examined as PW-1, also it was established that the addresses of the daughters of Geeta, as given in the

school, were that of the suit premises. From the statement of the aforesaid three witnesses there remained no doubt that Geeta and her husband with three daughters had been residing with the petitioner in the suit premises. That being so, it could be said that the daughter of the petitioner and her family were dependent upon the petitioner for their residential need. It was not in dispute that at the time of filing of the petition, there was only first floor that was available with the petitioner for residence for self and other family members. The petitioner examined himself as PW-4 and while admitting that the ground floor of the premises had been got vacated on 13.05.2007, he stated that the same had been let out to another tenant. Taking note of the fact that the petition was filed on 10th August, 2006 for eviction of the respondent from the second floor, whereas the ground floor had been got vacated on 13.05.2007 and was re-let to another tenant, during the pendency of the eviction petition, the ARC suspected doubt in the bonafide need of the petitioner of the suit premises. The learned ARC also observed that the petitioner, having claimed to be a senior citizen, could have occupied the ground floor premises, instead of letting out and seeking eviction of the tenanted second floor accommodation and that all this created doubt in his banafide need.

6. Before adverting to the submissions made by the learned counsel for the parties, this Court must reiterate that the power of this Court under section 25-B(8) of the Act are not as wide as those of Appellate Court and in case it is found that the impugned order is according to law and does not suffer from any jurisdictional error, the High Court must refrain from interfering with the same. The power under this provision is limited and

supervisory in nature. Only when it is evident that the Rent Controller has committed grave illegality or came to a conclusion which was not possible, based on the material produced, should this Court interfere in the orders passed by the Rent Controller. In **Sarla Ahuja Vs. United India Insurance Co. Ltd., AIR 1999 SC 100** the Apex Court has held as under:

“The satisfaction of the High Court when perusing the records of the case must be confined to the limited sphere that the order of the Rent Controller is “according to law”. In other words, the High Court shall scrutinize the records to ascertain whether any illegality has been committed by the Rent Controller in passing the order under Section 25B. It is not permissible for the High Court in that exercise to come to a different fact finding unless the finding arrived at by the Rent Controller on the facts is so unreasonable that no Rent Controller should have reached such a finding on the materials available.”

7. The learned counsel appearing for the petitioner submitted that the tenanted premises on the second floor was more suitable for the petitioner as that would provide more safety and security for the young grand-daughters of the petitioner, than the accommodation on the ground floor. The petitioner who had examined himself as PW-4 had also stated to the effect that first and second floor would provide security as he could keep the main gate closed throughout the day. The statement of the petitioner to this effect is found to be beyond the pleadings. It was nowhere his case that the tenanted premises on the second floor was to be more suitable in terms of security and safety. His case as set up in the eviction

petition is that he required the tenanted premises for the need of his family and that of his daughter. This plea of the second floor providing more security than the ground floor has been taken to cover up re-letting of the ground floor premises after it was vacated in May 2007, during the pendency of the present petition. Similarly, the plea that the ground floor portion was re-let to generate some additional income to meet expenses towards property tax, electricity and water charges etc., rather goes to create doubt in his bonafide need. It was his case that he and his wife were aged and ailing and required a separate room. If he was running a shop on the ground floor, the portion of the ground floor was certainly suitable at least for him and his wife and also for his guests and relatives. In that scenario, his afterthought wish of security could also be taken care by providing first floor to his daughter and her family. It was no where his case that he also required the ground floor as well as second floor of the premises. If it was so, he would not have re-let the ground floor to another tenant during the pendency of this petition against the respondent. The finding of fact, as recorded by the ARC, cannot be faulted with on any count.

8. In view of my above discussion, I do not find any merit in the petition. The same is hereby dismissed.

M.L. MEHTA, J.

SEPTEMBER 04, 2012

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